STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of D. B. STEWART, Minor.

UNPUBLISHED
June 3, 2014

No. 319514
Wayne Circuit Court
Family Division
LC No. 12-510381-NA

Before: MURRAY, P.J., and JANSEN and SHAPIRO, JJ.

PER CURIAM.

Respondent J. Caleb appeals as of right from a circuit court order terminating her parental rights to the minor child pursuant to MCL 712A.19b(3)(a)(*ii*), (c)(*i*), (g), and (j). We affirm.

The trial court did not clearly err in finding that §§ 19b(3)(c)(*i*), (g), and (j) were each established by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 355-357; 612 NW2d 407 (2000); MCR 3.977(H)(3)(a) and (K). The evidence presented to the trial court established that respondent had a history of mental illness, which was one of the conditions that led to the child's adjudication. As an apparent result of her condition, respondent was unable to provide sanitary living conditions or attend to her child's personal hygiene. Respondent had gone to Detroit Central City Community Mental Health (CMH) for treatment, but she never stayed long enough to actually receive treatment and she exhibited signs of psychosis when she met with the foster-care worker or visited her child. Although respondent showed some improvement following a hospitalization, she still could not state with any certainty where she was receiving treatment and she had a history of neglecting her treatment. The trial court did not clearly err in finding that respondent "has not consistently participated in CMH services, including therapy and mental health medications to stabalize [sic] her behaviors." Considering that respondent had been working to address her mental health issues since April 2012, the trial court did not clearly err in finding that the condition was not likely to be rectified within a reasonable time, and that there was no reasonable expectation that respondent would be able to provide proper care and custody within a reasonable time given the child's age. MCL 712A.19b(3)(c)(*i*). Further, the evidence supported the trial court's conclusion that respondent's unaddressed mental health issues interfered with her ability to properly parent her child, as shown by the state in which the child was found in September 2012 and respondent's inability to even focus on the child during family visits, MCL 712A.19b(3)(g). In light of these facts, the trial court also did not clearly err in finding that the child was reasonably likely to be harmed if returned to respondent's home. MCL 712A.19b(3)(j).

To the extent that respondent argues that petitioner did not provide her with sufficient reunification services, because respondent never objected below to the services provided or claimed that they were inadequate, the argument is not preserved for appeal. *In re Frey*, 297 Mich App 242, 247; 824 NW2d 569 (2012). Therefore, "review is limited to determining whether a plain error occurred that affected substantial rights." *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007), aff'd 480 Mich 19 (2008).

"In general, petitioner must make reasonable efforts to rectify conditions, to reunify families, and to avoid termination of parental rights." *In re LE*, 278 Mich App 1, 18; 747 NW2d 883 (2008). Although respondent complains that she was not referred for a psychiatric or psychological evaluation, the evidence showed that she had previously been referred to CMH in connection with a prior agency referral and was found to have schizoaffective disorder. Because respondent had already been referred there and had an open case, it was appropriate for the caseworker to have respondent go back to Detroit Central City CMH rather than make a formal referral. The facts established that respondent was not receptive to mental health treatment and she never achieved the necessary mental stability to establish compliance with other services. Accordingly, respondent has not established that petitioner's reunification efforts were unreasonable.

Finally, considering respondent's significant, unresolved mental health issues, the deplorable conditions in which the child was living while in respondent's care, respondent's poor visitation record during the pendency of the proceedings, and the lack of interaction between respondent and the child during visits that respondent did attend, the trial court did not clearly err in finding that termination of respondent's parental rights was in the child's best interests. MCL 712A.19b(5); MCR 3.977(H)(3)(b) and (K).[1]

Affirmed.

/s/ Christopher M. Murray
/s/ Kathleen Jansen
/s/ Douglas B. Shapiro

[1] Respondent, citing to *In re Hall-Smith*, 272 Mich App 470; 564 NW2d 156 (1997), incorrectly asserted in her brief that she had the burden of production on this issue. The Supreme Court overruled *In re Hall- Smith* on this exact point. See *In re Trejo*, 462 Mich 341, 353; 612 NW2d 407 (2000). Respondent also incorrectly cites *In re Hall-Smith* for the proposition that termination cannot occur if it is shown that termination is "not in the best interest of the child." That standard was legislatively overruled in 2008. See *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009).